



DEPARTMENT OF VETERANS AFFAIRS

8320-01

Public Notice of Proposed Waivers

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) will operate a website where the public may review and comment on VA employee requests for waiver of the prohibition against an employee's receipt of any wages, salary, dividends, profits, gratuities, or services from, or ownership of any interest in, a for-profit educational institution in which an eligible person or veteran is pursuing a program of education under a VA education benefits program.

FOR FURTHER INFORMATION CONTACT: Christopher Britt, Office of General Counsel (02-EST), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, 202-461-7637 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 3683, and implementing regulations at 38 CFR 21.4005, Department of Veterans Affairs (VA) employees who received any wages, salary, dividends, profits, gratuities, or services from, or owned any interest in, a for-profit educational institution in which an eligible person or veteran is pursuing a program of education under a VA education benefits program, must be removed from Federal service, unless VA leadership grants a waiver.

On September 14, 2017, VA proposed to waive the application of § 3683(a) for all VA employees, as long as employees abided by 18 U.S.C. 208 and 5 CFR 2635.502, two conflict-of-interest laws that limit the extent to which Federal employees may participate in Federal matters that affect their own financial interests and those of

certain non-Federal persons or entities (see 82 Fed. Reg. 43288). On October 16, 2017, after further consideration, including review of comments submitted in response to the September 14, 2017, notice, VA withdrew this proposal (see 82 Fed. Reg. 48153).

VA will mandate that all employees who require a waiver under § 3683 must individually request a waiver from the appropriate VA official. Employees who satisfy the waiver criteria at 38 CFR 21.4005(b)(1) must request a waiver from either their facility head (for employees under the jurisdiction of a facility head) or the Director, Education Service (for employees not under the jurisdiction of a facility head). Employees who do not satisfy the waiver criteria at 38 CFR 21.4005(b)(1) must request a waiver from the Under Secretary for Benefits, as the Secretary of Veterans Affairs has delegated to the Under Secretary for Benefits the authority, under 38 CFR 21.4005(c)(3), to grant waivers to employees who do not satisfy the waiver criteria.

Section 3683(d) requires “reasonable notice and public hearings” prior to the granting of a waiver. Accordingly, when VA proposes to grant a waiver, VA will post data from the waiver request to a publicly available website (https://www.va.gov/ogc/38_usc_3683.asp) and allow the public 30 days to comment on the proposed waiver. Courts have found that a “public hearing” requirement may be satisfied, at least in some circumstances, by written public notice and an opportunity to submit written comments. See, e.g., *UFW v. Adm'r, EPA*, 592 F.3d 1080, 2010 U.S. App. LEXIS 1712 (9th Cir., 2010). Because website posting of proposed waivers and soliciting written comments on these waivers would allow for more participation than in-

person hearings, VA has concluded that such process would serve the purpose of § 3683 more effectively than in-person hearings at specified times and places.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Peter O'Rourke, Chief of Staff, Department of Veterans Affairs, approved this document on May 14, 2017, for publication.

Dated: May 14, 2018

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